



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-5/55633

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Brown County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on December 17, 2002, at Green Bay, Wisconsin.

The issue for determination is whether the petitioner had excess assets based on the proceeds from the sale of her New Mexico home until they were used in the purchase of her Wisconsin home

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Sue Salmon, ESS
Brown County Dept Of Social Services
Wisconsin Job Center
325 North Roosevelt Street
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Joseph A. Nowick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Brown County.
2. The petitioner, through her husband applied for institutional MA on October 18, 2002.
3. On November 14, 2002, the county agency sent a notice to the petitioner that her institutional MA had been approved from August 1, 2002, and onward. The county agency denied eligibility for June and July, 2002, due to excess assets.

4. The petitioner had lived in New Mexico and owned a home there. That home was sold in June, 2002, and the proceeds of over \$50,000 were used to purchase a home in Wisconsin. The Wisconsin house closed on August 15, 2002. Between the two real estate transactions, the money was placed in a bank.

DISCUSSION

An asset is considered "available," and thus countable for MA, when it is (1) actually available, (2) the person has a legal interest in the liquidated sum, and (3) the person has the legal ability to make the sum available for support and maintenance.

See MA Handbook, App. 11.1.0.

The Code of Federal Regulations at 20 CFR sec. 416.1201(a)(1), provides:

(a) Resources: defined. For purposes of this subpart L, resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance.

Normally, when an applicant sells a home and the proceeds are deposited and left in a bank for an indeterminate amount of time, there is no doubt that the money must be considered an asset. However, the proceeds in this case were used to purchase a new home in Wisconsin.

For the recipients of Social Security, the Wisconsin MA program uses the same definition of assets as the SSI program. (See Wis. Stats. §49.46.) The Program Operations Manual System (POMS) provides the policies relating to SSI. Section SI 01130.110 "Home Replacement Funds" states the following:

A. POLICY PRINCIPLES

1. General

When an individual sells an excluded home, the **proceeds of the sale** are excluded resources if the individual:

- plans to use them to buy another excluded home, and
- does so within 3 full calendar months of receiving them

This corresponds to the provision in the MA Handbook, Appendix 11.7.4, which is almost identical to the above POMS language.

Unfortunately, the record is very unclear as to the exact date of the sale of the New Mexico home. In one document, the county agency gave the month as May, in another the month indicated was June. Thus, as part of the remand, the county agency must determine the exact date of that closing. If the closing for the New Mexico home was on or after May 16, 2002, then the new house was purchased within three months of the sale of the old house and the proceeds may be excluded from the available assets for July.

One other issue arose at the hearing. An application for Medical Assistance must be processed and eligibility determined when an application is signed and submitted to the county department of social services. The Wisconsin Administrative Code at s. HFS 102.01 states the following:

HFS 102.01 Application.

...

(7) SIGNING THE APPLICATION. Each application form shall be signed by the applicant or the applicant's caretaker relative defined under s. HSS 201.03 (6), legal guardian, authorized representative or, where the applicant is incompetent or incapacitated, by someone acting responsibly for the applicant.

In this case, no application form was completed, signed and submitted until October 18, 2002. MA certification can be backdated for up to three months prior to the month of application, if all conditions of eligibility (including meeting the asset test) are satisfied during that period. See sec. HSS 103.08(1), Wis. Adm. Code. Based on the October 18th application, the earliest possible eligibility date would be July 1, 2002.

CONCLUSIONS OF LAW

1. The proceeds of the sale of a home are exempt assets if the individual plans to use them to buy another excluded home, and does so within 3 full calendar months of receiving the proceeds.
2. The earliest the petitioner's MA may be backdated is July 1, 2002, which is three months prior to the month of application

NOW, THEREFORE, it is

ORDERED

The petition for review is remanded to the county agency to first determine the date of the closing for the New Mexico home. If it was on or before May 15, 2002, the petition for review is hereby dismissed. If it was on or after May 16, 2002, the county agency must determine the petitioner's eligibility for institutional MA for July 1, 2002, without considering the proceeds from the sale of her New Mexico home that were used to purchase the home in Wisconsin. The county agency must complete this eligibility determination within 10 days from the date of this Order.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence that would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 30th day of
December, 2002

/sJoseph A. Nowick
Administrative Law Judge
Division of Hearings and Appeals
131/JAN